

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7167

BILL NUMBER: HB 1645

NOTE PREPARED: Jan 11, 2009

BILL AMENDED:

SUBJECT: Mortgage Fraud and Regulated Professions.

FIRST AUTHOR: Rep. Burton

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill amends the law concerning the disclosures that a credit service organization must provide to a buyer to reflect changes in the federal Fair Credit Reporting Act concerning the circumstances under which a consumer is entitled to a consumer report without charge from a consumer reporting agency. The bill amends the statute concerning mortgage rescue protection fraud to provide that certain: (1) financial institutions; (2) government sponsored enterprises; (3) government agencies; and (4) other persons; are subject to the requirement that a mortgagee provide certain notice to a mortgagor at the time of filing a complaint in a foreclosure action. The bill requires a foreclosure consultant to retain all records related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract.

Home Loan Practices Act- The bill prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. The bill prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true.

Surrender of License- The bill provides that the board that regulates a licensed profession may not approve the surrender of a practitioner's license if the Attorney General's office: (1) has filed an administrative complaint concerning the practitioner's license; and (2) opposes the surrender. The bill provides that a practitioner who has been subjected to disciplinary sanctions may be required to pay the costs of any real estate review appraisal obtained in connection with the disciplinary proceedings.

Additional Violations- The bill provides that a violation of the statutes concerning: (1) credit service

organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Surrender of License-* This provision could increase the workload of a professional licensing board if action had to be taken against more practitioners.

Explanation of State Revenues: *Additional Violations- Penalty Provision:* The bill would establish a new Class A misdemeanor. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Home Loan Practices Act- The bill changes which persons would not be allowed to engage in a real estate transaction or mortgage transaction. Under current law, the person would have to be engaged in a deceptive act. Under the bill, the person would have to be licensed. This provision could increase the number of persons held in violation of the Home Loan Practices Act, under which, a person may be charged with a Class A misdemeanor.

Civil Penalties- Violation of the bill's provisions could also require a violator to be subject to civil penalties of varying amounts. For a violation of IC 24-5-15 or IC 24-5.5 the penalty would be \$1,000 per violation. If a violator faced violation of the Home Loan Practices Act a civil penalty could be up to \$10,000 per violation.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalty Provision:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected:

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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